

# OFFICE OF THE STATE PUBLIC DEFENDER



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### REPORT TO THE PUBLIC DEFENDER COMMISSION

William F. Hooks, Chief Public Defender  
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**Office of the State Public Defender.** The offices I supervise, commonly referred to as "Program 1," provide trial-court level representation to OPD clients. Our staff and attorneys are the point of first contact for our clients. Program 1 also supports the Public Defender Commission and the other components of the agency, by providing budget, accounting, travel, and IT services.

#### Provision of Legal Representation.

Program 1 provides legal representation to clients in all of Montana's 207 courts. Services are provided through eleven regional offices. Each office is led by a Regional Deputy Public Defender, who reports directly to the Chief Public Defender. In addition to our eleven regions, Program 1 has a Major Crimes Unit, comprised of four attorneys and two support staff. The MCU is available to provide representation in complex and high profile cases throughout the state.

The responsibility to provide representation is triggered by the state's initiation of a court action in any of several case types set out in Titles 41, 45, 46 and 47 of the Montana Code. Upon the state's filing of the court action, a court will order OPD to assign an attorney to represent a person affected by the state's action.

Many of these case types are contingent on a determination that the person is financially eligible for representation by a public defender. In criminal prosecutions, which make up a majority of OPD's caseloads, every accused person must be informed of the right to have an attorney and must be asked if the aid of an attorney is desired, during the accused person's initial appearance in court. If the accused person desires assigned counsel because of financial inability to retain private counsel and the offense charged is a felony or the offense is a misdemeanor and incarceration is a sentencing option if the defendant is convicted, the court shall order the office of state public defender to assign counsel to represent the defendant without unnecessary delay pending a determination of that person's financial eligibility.

Generally, when a court orders OPD to assign an attorney to represent a person, the regional office in which the case was filed takes two initial steps. First, OPD immediately assigns an attorney to the case. Second, OPD determines if the person is indigent, or financially unable to retain private counsel, pursuant to statutory standards. The person is entitled to be represented by an attorney during the period in which OPD makes the financial eligibility determination. If OPD determines that the person is not financially eligible for public defender services, OPD notifies the Court so that the order of assignment may be rescinded.

Title 47 provides that a court may order OPD to assign counsel to represent persons in several other types of cases, regardless of the person's financial ability to retain private counsel.

If an OPD staff attorney is unable to provide representation to a client because of a conflict of interest, the case must be referred to the conflicts office.

Provision of Support Services. Program 1 supports the Commission and the other components of the agency, by providing budget, accounting, travel, and IT services.

Training. Training for OPD's attorneys, support staff and investigators, as well as for contract attorneys, is provided by Program 1. Peter Ohman is the Training Coordinator.

Contract Management. OPD utilizes the services of private attorneys to handle cases in regions in which the staff workloads exceed our capacity, and in regions in which we don't have an adequate staff attorney presence. OPD also contracts with mental health experts, addiction specialists and other providers, as well as investigators and other support persons. Wendy Johnson is our Contract Manager, and oversees all aspects of the contracting program.

Central Support. The office is located in Butte. Administrative Director Harry Freebourn supervises central support operations. The staff handles all aspects of approval, payment, recording, reporting, and management of defense expenses. The staff account for all budgetary issues, including receipt of special revenue paid by OPD clients in the form of public defender fee reimbursements.

Program 1 reports data for each fiscal year to the legislative fiscal analyst, regarding caseload information for the entire public defender system.

**Personnel Update.** For years, many of OPD's non-attorney staff positions were paid based on the market salary rate that was in effect in 2006, when the agency was created. Going in to the 2015 Legislative Session, the Commission made it a budget priority to get an appropriation that would enable management to raise all non-attorney staff positions to the 2014 market. The Legislature authorized an appropriation of \$625,000 for non-attorney salary increases. Although this amount was not sufficient to permit us to bring every non-attorney to the 2014 market ranges, we were deeply appreciative of the legislators' recognition of our salary needs and their willingness to help us remedy the problem.

Many of OPD's staff and the investigator work force are members of the American Federation of State, County and Municipal Employees. OPD negotiated with the AFSCME representatives, and reached an agreement on a new, two-year Collective Bargaining Agreement. Under the terms of the CBA, all union and non-union support staff positions will be paid pursuant to the 2014 market. We were not able to bring other positions to the 2014 market, but all non-attorney positions received a pay raise.

A separate source of funds was made available through the executive branch, for use in funding the OPD staff attorney career ladder. We worked with AFSCME representatives and reached an agreement on a new, two-year CBA for our attorneys as well.

**Task Force on Public Defense.** The Task Force on State Public Defender Operations held its initial hearing in the Capitol on September 17. As stated in House Bill 627, the task force "shall study the operations of the office of state public defender and develop a long-term organizational plan for the next 6 to 10 years that will allow the office to provide effective assistance of counsel to those that qualify." In the morning session, OPD senior managers provided summaries of OPD's statutory obligations and answered questions. In the afternoon session, the Task Force heard from those who serve "in the trenches." Appearing on behalf of OPD were Terry Jessee, a member of the Public Defender Commission and an LCPC who works in the Yellowstone County Detention Facility; Chris Abbott, a Region 4 (Helena) staff attorney; and Eileen Larkin, a staff attorney with the Appellate Defender Office. Fred Snodgrass, a Billings attorney, shared his views as an OPD contract attorney. The judicial branch was represented by Chief Justice Mike McGrath, Missoula County District Judge John

Larson, and Blaine County Justice of the Peace Perry Miller. The Montana County Attorneys Association was represented by retired prosecutor Mark Murphy.

The Task Force adopted a work plan and set out tentative dates for future hearings during the next twelve months.

**Legislative Update.** During legislative sessions, legislators identify issues to study in detail. Interim committees are appointed to conduct these studies during the interim periods between legislative sessions.

The Law and Justice Interim Committee monitors the activities of the Department of Corrections, the Department of Justice, the Office of the State Public Defender, and the Judicial Branch; examines law and justice policy issues; and makes recommendations to the legislature. The LJIC is studying issues relating to sexual assault in Montana. Program 1 is monitoring the proceedings in the LJIC.

Program 1 is participating in other legislative committees that will study issues relating to the justice system and report to the 2017 legislative session. Peter Ohman is a member of the Commission on Sentencing. The Commission, which held its first meeting on September 2, will undertake several tasks, including conducting “an empirical study of the impact of existing sentencing policies and practices on Montana's criminal justice system,” and identifying opportunities to streamline and simplify the criminal code.

The Children, Families, Health, and Human Services Interim Committee is reviewing a number of issues relating to provision of mental health services and guardianship proceedings. Douglas Day, our regional deputy in Region 7 (Lewistown), appeared as a panel member on guardianship issues during the Committee’s September 14 hearing.

An interim Judicial Redistricting Commission is studying whether judicial redistricting is necessary, based on a number of factors which include weighted caseloads and the increase in the types and numbers of cases. The results of this study may also support a request by the judicial branch to increase the number of district judges in some districts. Program 1 is monitoring the proceedings conducted by this commission.

**Client Services.** We represent a number of military veterans in our criminal, civil and treatment court cases. At my request, Dave Stenerson, our Region 2 (Missoula) deputy public defender and a veteran himself, has formed a working group of staff and contract attorneys with the goal of identifying practices and services we should implement in our representation of veterans.

Lisa Benevides is our staff social worker/case manager in our Helena office. With Lisa’s involvement, the level and type of case-specific services we can now provide for our clients in criminal and dependent/neglect cases is substantial. We are better able to develop a client-centered team approach. For example, a client was unable to get out of jail in part because she had no safe or reliable place to stay. Lisa was able to get our client screened for entry into the local YWCA, and with this housing in place, the prosecutor agreed to our client’s release on her own recognizance. Lisa has helped attorneys find ways to break through communication barriers that may come up in working with mentally ill clients. In one dependent/neglect case, Lisa helped get the client released from jail on her own recognizance, coordinated community services to provide a wrap-around treatment plan, and helped establish a plan by which our client could get visitation with her child.

Lisa’s involvement in cases can help bring about better, more appropriate resolutions. One of our Helena attorneys reported that “without Lisa’s presence, training, and experience, I do not believe that [client] would have been as likely to have a second chance at keeping a felony off of her record, and be given a second

chance, at the young age of 18.” Lisa helped another client get placed with an adult foster care program; had he not found a placement, he likely would have been sentenced to prison.

Enhanced productivity and cost savings are additional benefits from utilizing the services of a case manager. An attorney noted that “Lisa saved me countless hours of helping my client through a very stressful situation... All the hours she spent were hours I would have needed to spend that I was then able to work on the legal side of the case... This case was truly a collaborative effort.” Another of our Helena attorneys has “no doubt that the cycle of [mental health] commitments would have continued if not for Lisa’s involvement in the case. She helped move the criminal case along and prevented the waste of large sums of money to keep committing and housing [client] at the state hospital.”

The value of enhancing our client services through the use of case managers is clear. It is our goal in Program 1 to strive to add these support services throughout the state.

**Management Development/Training.** In May, we convened a meeting of the Program 1 regional deputies. Ten of the regional deputies, Peter Ohman and I spent a day and a half discussing the budget and legislative issues, including the task force and the one-time-only budget impacts. We also discussed the Commission’s efforts to revisit and revise the OPD strategic plan. Kristina Neal joined us for a discussion on how we might be able to improve our processes regarding conflict case referrals. We developed several goals and objectives, and a draft plan has been provided to the Commission’s Strategic Planning Committee.

In June, I attended a three-day executive leadership conference sponsored by the National Association for Public Defense at Valparaiso Law School. The theme of the conference was client-centered leadership.

#### **Stakeholder Activity.**

Commission on Courts of Limited Jurisdiction. The courts of limited jurisdiction in Montana include 61 Justice Courts, 84 City Courts and 6 Municipal Courts. I serve as a member of the Commission on Courts of Limited Jurisdiction, which identifies educational needs and supervises programs that result in judge certification. The Commission meets approximately every 2 months, and puts on two training conferences each year. In April, I spent a day discussing issues of common interest with the judges during their spring training conference.

Nick Miller, an attorney in our Bozeman office, will make a presentation on defense-related issues relating to aggravated DUI cases during the fall training conference at the end of September.

Montana Board of Crime Control. As chief public defender, I was appointed by the Governor to serve on the Montana Board of Crime Control, representing a criminal justice agency. The Board’s mission “is to proactively contribute to public safety, crime prevention and victim assistance through planning, policy development and coordination of the justice system in partnership with citizens, government and communities.” In addition to serving as a Board member, I serve on various committees. In September, I attended the Board’s annual retreat.

In October, I will be a member of a panel discussion on legislative developments and their impacts on the criminal justice system during the 9<sup>th</sup> Annual Montana Crime Prevention Conference, sponsored by the Board.

Peter Ohman, OPD’s Training Coordinator, serves as a member of the Board’s Youth Justice Advisory Council.